

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15894 of Victor Gaetan, pursuant to 11 DCMR 3107.2, for a variance from the floor area ratio requirements (Subsection 402.4) a variance from the rear yard requirements (Subsection 404.1), a variance from the lot occupancy requirements (Subsection 403.2), and a variance to allow an addition to an existing nonconforming structure that now exceeds the lot occupancy and floor area ratio requirements and will create a new nonconformity in not meeting the minimum rear yard requirements [Paragraph 2001.3(a), (b) and (c)] to construct an addition to a nonconforming structure to be used as a residence and an art gallery in a DCOD/R-5-B District at premises 2106 R Street, N.W. (Square 66, Lot 59).

HEARING DATE: February 23, 1994
DECISION DATE: April 6, 1994

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject site is located at 2106 R Street, N.W. on the south side of the street between Florida Avenue and 21st Street N.W. The site is located in the Dupont Circle Overlay District (DCOD), and is zoned DCOD/R-5-B.

2. The site comprises 1,178 square feet of land area and is developed with a four-story brick row structure which was constructed in 1872. The site abuts a five-foot wide public alley to the rear and to the southeast. The site has an 18.75-foot frontage on R Street.

3. The first and second floors of the existing structure are currently used as an art gallery and, the upper floors are used as a single-family dwelling. The applicant is proposing to construct a four-story addition with a mezzanine on the top floor at the rear of the existing structure. The proposed addition would be used as a single-family dwelling.

4. The site is located in the DCOD/R-5-B District. The R-5-B District permits matter of right development of general residential uses including single-family dwellings, flats and apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8, and a maximum height of 60-feet.

The Dupont Circle Overlay District (DCOD) is mapped in combination with underlying zone districts. This overlay district was developed primarily to control the scale of development and to protect the existing integrity of the historic and predominantly residential character of the Dupont Circle area.

5. The existing dwelling is nonconforming, already exceeding the lot occupancy and floor area ratio (FAR) requirements for the R-5-B District. The applicant is therefore, requesting variances to allow an addition to a nonconforming structure. The applicant is also seeking variances from the rear yard requirements, the allowable percentage of lot occupancy and FAR requirements. The proposed addition would create a new nonconformity in not meeting the minimum rear yard requirements. The addition would eliminate the existing rear yard.

6. The applicant testified that the nonconformity of the existing structure is due to the exceptional condition related to the physical aspect of the property, the fact that the structure was constructed before the enactment of the current Zoning Regulations in 1958. The applicant further testified that the removal of a significant notch from the subject lot over 50 years ago is a unique aspect which deprived the applicant of reasonable use of the property.

7. The applicant stated that the notch is the end-point of an alley which is a part of a system of alleys running through the block. The alley system is no longer used. The applicant noted that the anachronistic nature of the alley system had been endorsed by the BZA through approval of several variance requests by the Cosmos Club to close alleys. The applicant further stated that the five-foot wide alley which abuts the subject property once had access to R Street until it was bricked-in by renovation and construction at 2104 R Street (adjoining property to the east).

8. By report dated January 11, 1994 through testimony at the hearing, and through a supplemental report dated March 28, 1994, the Office of Planning (OP), recommended denial of the application. The OP stated that the proposed addition would increase the lot occupancy to require a variance of 64 percent and an FAR variance of 100 percent, and moreover, the proposed addition would eliminate the existing rear yard. As such, the proposed addition would substantially impair the intent and purpose of the DCOD/R-5-B District regulations. Although the subject lot is irregularly shaped, its irregularity cannot be considered unique because Square 66 in which the subject property is located contains various shapes and sizes of lots. The topographical characteristics of the property are similar to other properties in the area. The existing structure is also similar to other structures in the area. Therefore, there is no uniqueness in the subject property in terms of its physical characteristics or any characteristic extraneous to the property. The Office of Planning finds no practical difficulty arising out of some extraordinary or exceptional situation or condition inherent in the property itself.

9. The Advisory Neighborhood Commission (ANC) 2B filed no report on the application and did not appear at the hearing to testify.

10. There were no parties in support of or in opposition to the application at the hearing.

11. The conclusion of the hearing, the Board requested the Office of Planning to conduct a site inspection in order to determine, with the applicant's assistance, the existence or non-existence of a practical difficulty that is inherent in the property. The Board further requested the Office of Planning to submit a supplementary report on its findings. The Board also asked its staff to request the ANC 2B to submit a letter indicating the views of the ANC regarding the application. Subsequently, the Board left the record open to receive the Office of Planning's supplemental report, the ANC's letter, the applicant's response to the Office of Planning's submission and the applicant's proposed findings.

12. By report dated March 23, 1994, the Office of Planning indicated that its previous recommendation for denial of the application remains unchanged. The report stated that the Office of Planning staff revisited the site accompanied by the applicant and looked at the property in terms of the factors identified by the applicant at the public hearing but was unable to find any uniqueness in the property relative to other properties in the area. The report further stated that the Office of Planning's original determination that the proposed addition would adversely impact the neighboring properties was only reinforced by the visit.

13. By a letter dated March 15, 1994, the ANC 2B Commissioner for the subject area indicated that he was not aware of any objection by the residents of ANC 2B or by the ANC itself.

14. By a letter dated March 11, 1994, the applicant requested the Board to postpone consideration of the application to its next meeting (May) in order to give the Historical Preservation Review Board (HPRB) time to submit an opinion on the application. No other submission was filed in the record by the applicant.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

1. There is no uniqueness in the subject property in terms of its physical characteristics or any characteristics extraneous to the property and relative to other properties in the area.

2. The requested variances are too excessive for the DCOD/R-5-B District in which the property is located.
3. The Board can reach a decision in this case without input from HPRB.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking variances from the floor area ratio, the rear yard requirements, the allowable percentage of lot occupancy requirements and a variance to allow an addition to an existing nonconforming structure that now exceeds the lot occupancy and floor area ratio requirements and will create a new nonconformity in not meeting the minimum rear yard requirements to construct a four-story addition to a nonconforming structure to be used as a residence and an art gallery.

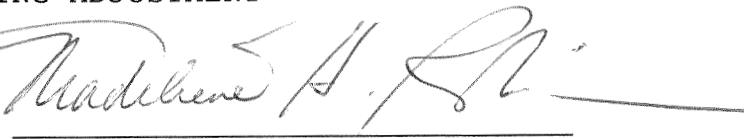
Granting such variances, requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as, exceptional, narrowness, shallowness, shape or topographical conditions. In addition, the Board must find that granting the application, will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board is of the opinion that there is nothing in the record of this case which shows this property to be unique or extraordinary that would justify the granting of the requested variances, which in each instance would exceed the zoning requirements by 95 to 100 percent. The Board believes such variances would be excessive and would impair the intent, purpose and integrity of the zone plan for the DCOD/R-5-B District. Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 4-0 (Maybelle Taylor Bennett, Angel F. Clarens, Laura M. Richards, George Evans to deny; Craig Ellis not voting, not having been present).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

SEP 22 1995

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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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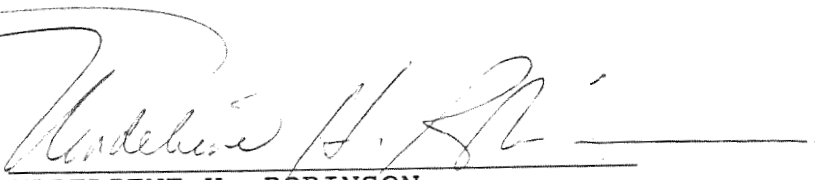


BZA APPLICATION NO. 15894

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 22 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Victor Gaetan
2106 R Street, N.W.
Washington, D.C. 20008

Mr. Henry Fernandez, Chairperson
Advisory Neighborhood Commission 2B
1601 Connecticut Avenue, N.W., #802
Washington, D.C. 20009



MADELIENE H. ROBINSON
Director

DATE: SEP 22 1995